

REMARKS

Claims 11-17 are withdrawn from consideration due to a restriction requirement.

Claims 18 and 19 are pending and are presented for reconsideration.

Claim Rejections – 35 USC 103(a)

Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Muehlbauer et al (GB 1,079,348) and Kaminski et al (US 4,115,588) or Lang et al (US 4,772,689) or Blank (US 4,847,088) in combination.

The present invention concerns a personal care preparation comprising as an antimicrobial active substance, an oxathiazol-2-one derivative, and a cosmetically tolerable adjuvant.

In contrast, Muehlbauer et al. describe a preparation comprising a fungicidally active oxathiazol-2-one derivative that is formulated in acetone (see GB 1,079,348 on page 3, lines 9 to 11).

The preparation described by Muehlbauer et al. cannot be used for a human body since acetone is a target organ and reproductive toxin (see enclosed material safety data sheet for acetone from the manufacturer). Hence, acetone is not a cosmetically tolerable adjuvant. In addition, Muehlbauer et al. do not provide any suggestion that their preparation could be used for human beings.

In contrast, Muehlbauer et al. teach the use of their preparations for industrial processes such as in the preparation of auxiliary products for use in the production of synthetic resins (see GB 1,079,348 on page 3, lines 7 to 10).

There is no suggestion provided by Muehlbauer et al. that the oxathiazol-2-one derivatives could be used for applications on the human body or how the preparation described by Muehlbauer et al. could be modified for use in personal care preparations according to the present invention.

Hence, a skilled person would not be motivated to use oxathiazol-2-one derivatives for applications on the human body.

Even if a skilled person were to combine the teaching of Muehlbauer et al. with that of Kaminiski et al., he would not arrive at the present invention.

Kaminiski et al. describe personal care preparations for antibacterial use such as mouthwashes, shampoos, soaps and cosmetic bases, however with a completely different compound, namely the N-chloramino alcohol derivatives (see US 4,115,588, column 17, lines 25 to 29).

Since there is no hint provided by Kaminski et al. that N-chloramino alcohol derivatives could be replaced by oxathiazol-2-one derivatives, a skilled person would not be motivated to do so. These compounds are chemically different and may cause adverse effects on the human body, which are not foreseeable.

In addition, there is no teaching given by Lang et al. or Blank et al. that would motivate a skilled artisan to replace the N-chloramino alcohol derivatives of Kaminski et al. with oxathiazol-2-one derivatives.

Neither Lang et al. nor Blank et al. describe oxathiazol-2-one derivatives.

Lang et al. describe quaternary chitosan derivatives, which are used as conditioning agents in cosmetic compositions, that may contain customary additives such as bactericides or fungicides. However, oxathiazol-2-one derivatives are not customarily used additives in cosmetic compositions. They are instead used in industrial preparations such as described by Muehlbauer et al. Since chitosan derivatives are completely different from oxathiazol-2-one derivatives and there is no suggestion provided by Lang et al. that oxathiazol-2-one derivatives could be used in cosmetic compositions, a skilled person would not be motivated to use them in personal care compositions.

Blank et al. describe the use inter alia of a personal care composition comprising an antimicrobial silicon quaternary ammonium compound in combination with an acid component. However, this silicon compound is completely different from the oxathiazol-2-one derivatives. Since, there is no suggestion provided by Blank et al. that the silicon compound could be replaced by an oxathiazol-2-one derivative, a skilled person would not be motivated to use the oxathiazol-2-one derivatives.

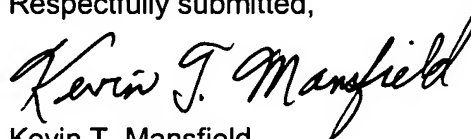
Hence, a skilled person could not arrive at the present invention since Muehlbauer et al. do not disclose personal care preparations and Kaminski et al., Lang et al. and Blank et al. do not provide any suggestion that their completely different classes of chemical compounds could be replaced by oxathiazol-2-one derivatives.

Further, a skilled person would not be motivated to replace the compounds taught by Kaminski, Lang and Blank with the chemically different oxathiazol-2-one derivatives because Muehlbauer et al. teach away from using them for human bodies and there is a potential risk that oxathiazol-2-one derivatives could cause adverse effects on the human body.

Therefore, the present invention is not obvious over the teachings of Muehlbauer et al., Kaminski et al., Lang et al., and/or Blank et al.

Reconsideration and withdrawal of the rejection of claims 18 and 19 is respectfully solicited in light of the remarks *supra*.

Respectfully submitted,



Kevin T. Mansfield
Agent for Applicants
Reg. No. 31,635

Ciba Specialty Chemicals Corporation
Patent Department
540 White Plains Road
P.O. Box 2005
Tarrytown, NY 10591-9005
(914) 785-7127

JUL 20 2005

Enclosure: Form 1449, 1 ref.

KTM21810A2